

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**THE STATE OF MISSISSIPPI, EX REL.)
JIM HOOD, ATTORNEY GENERAL)
FOR THE STATE OF MISSISSIPPI)
)
Plaintiff,)
)
v.) **No.: 3:08-CV-780-CWR-LRA**
)
ENTERGY MISSISSIPPI, INC., ET AL.)
)
Defendants.)
)**

**DEFENDANTS' NON-CONFIDENTIAL MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR LEAVE TO FILE EXHIBIT UNDER SEAL**

Defendants¹, pursuant to L.U. Civ. R. 79(e)(3), through counsel, submit this Non-Confidential Memorandum in Support of Motion For Leave to File Exhibit Under Seal, and state as follows:

I. RELEVANT BACKGROUND

On July 23, 2018, Defendants filed their Motion for Leave to File Exhibit Under Seal, and their Rebuttal Memorandum in Support of Defendants' Motion for Summary Judgment Based on State or Federal Preemption (Doc. 310).

In support of their Rebuttal Memorandum, Defendants rely on the following exhibit, which will be conventionally filed with the Court:

- (1) Exhibit A: Excerpts from Feb. 23, 2018 Deposition of Dr. David DeRamus.

The exhibit listed above ("the exhibit") contains confidential and/or highly sensitive business information. A Protective Order agreed to by the parties was entered into in this case on May 17, 2017

¹ Entergy Mississippi, Inc., Entergy Corporation, Entergy Services, Inc. and Entergy Power, Inc.

(Doc. 126). That Protective Order specifically requires that, when the parties file any confidential information among the Court records, such filing “shall be under seal, and shall not occur until the party seeking to so file or use the Confidential Information has obtained a separate Court order authorizing and requiring the sealing of the Confidential Information.” *Id.* at ¶ 9. Accordingly, Defendants request that the Court grant Defendants leave to file the exhibit under seal.

II. LEGAL ARGUMENTS

As stated, the exhibit contains both confidential and high sensitive business information. While motions to seal are to be granted cautiously, “sealing may be appropriate where order incorporate confidential business information.” *N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 204 (5th Cir. 2015). Defendants are aware that “a court must use caution in exercising its discretion to place records under seal,” and that consideration of such motion must take into account the strong presumption that court records are public and weigh that principle against any countervailing interests that would be served by closure. *United States v. Holy Land Found. For Relief and Dev.*, 624 F.3d 685, 686-91 (5th Cir. 2010).

In the instant case, the exhibit is relevant evidence supporting Defendants’ rebuttal in support of its motion for summary judgment, and no legitimate purpose is served by the exhibits being publicly accessible on the Court’s PACER/ECF system. Defendants do not wish to jeopardize the confidentiality of certain highly sensitive data and information of the parties involved in this suit.

As stated above, the parties agreed to a Protective Order (Doc. 126), pursuant to which the subject exhibits have been identified as “Confidential” and/or containing “Highly Sensitive Information.” *See Seals v. Herzing Inc.-New Orleans*, 482 Fed. Appx. 893, 896 (5th Cir. 2012) (affirming district court’s grant of motion to seal in part because the parties had in place an agreement to maintain confidentiality).

For purposes of Local Rule 79, the confidential and highly sensitive information contained in the exhibit constitutes clear and compelling reasons to seal the exhibit from public access only, and this action would be a narrowly tailored remedy under the circumstances. While the exhibit is relevant and warrants the Court's consideration as to factual and legal issues, no public interest is served by public disclosure, and there will be no prejudice to the public interest by allowing the exhibit to be submitted under seal.

Provided the Court grants Defendants' motion, all conventionally filed documents will comply with the requirements of L. U. Civ. R. 79(e). Pursuant to L. U. Civ. R. 79(e)(3)(B)(2), Defendants request that the exhibit “[b]e sealed from public access only, with CM/ECF access permitted to the litigants' counsel.” Further, the exhibit should be sealed for the duration of this case until full and final judgment and exhaustion of any appeals, at which time Defendants request that the exhibit be destroyed.

This 23rd day of July, 2018.

Respectfully submitted,

ENTERGY MISSISSIPPI, INC.,
ENTERGY CORPORATION,
ENTERGY SERVICES, INC. and
ENTERGY POWER, INC., Defendants

By /s/ Roy D. Campbell

Roy D. Campbell, III (MSB 5562)

J. William Manuel (MSB 9891)

Alicia N. Netterville (MSB 105055)

BRADLEY ARANT BOULT

CUMMINGS LLP

One Jackson Place

188 East Capitol Street, Suite 400

P.O. Box 1789

Jackson, MS 39215-1789

Telephone: (601) 948-8000

Facsimile: (601) 948-3000

rcampbell@bradley.com

wmanuel@bradley.com

anetterville@bradley.com

OF COUNSEL:

Tianna H. Raby, MSB #100256
Christopher R. Shaw, MSB #100393
ENTERGY MISSISSIPPI, INC.
308 E. Pearl Street, Suite 700 (39201)
Mail Unit M-ELEC-4A
P.O. Box 1640
Jackson, MS 39215-1640
(601) 969-2656 – Telephone
(601) 969-2696 – Facsimile
traby@entergy.com
cshaw4@entergy.com

John A. Braymer, *Pro Hac Vice*
Associate General Counsel
ENTERGY SERVICES, INC.
639 Loyola Avenue, Suite 2600
New Orleans, LA 70133
(504) 576-6822 - Telephone
jbrayme@entergy.com

James L. Robertson, MSB #5612
Charles E. Ross, MSB #5683
Rebecca Hawkins, MSB #8786
WISE CARTER CHILD & CARAWAY, P.A.
Post Office Box 651
Jackson, MS 39205-0651
(601) 968-5534 – Telephone
(601) 944-7738 – Facsimile
jlr@wisecarter.com
cer@wisecarter.com
rwh@wisecarter.com

Sanford I. Weisburst, *Pro Hac Vice*
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
sandyweisburst@quinnmanuel.com

Mark Strain, *Pro Hac Vice*
Jay Breedveld, *Pro Hac Vice*
Duggins Wren Mann & Romero
600 Congress Ave., Suite 1900

Austin, TX 78701
Telephone: (512) 744-9300
Facsimile: (512) 744-9399
mstrain@dwmrlaw.com
jbreedveld@dwmrlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

This the 23rd day of July, 2018.

/s/ Roy D. Campbell
OF COUNSEL